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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: )  
 ) Chapter 11  
GRUBB & ELLIS COMPANY, *et al.* ) Case No. 12-10685 (MG)  
 )  
Debtors. ) (Jointly Administered)  
-----X

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES  
PRESENTED ON APPEAL FROM ORDER OF THE  
BANKRUPTCY COURT ENTERED MARCH 27, 2012**

Vincent Carrega, Neil Helman, Jon Epstein, Charles Kingsley, Yoav Oelsner, Jason Meister, Michael Gottlieb, Howard Grufferman and Martin Cottingham (collectively, the “Brokers”), by and through their counsel, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, hereby designate the record and issues presented on appeal to the United States District Court for the Southern District of New York from the *Order Authorizing (A) the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances; (B) the Debtors to Enter Into and Perform Their Obligations Under the Asset Purchase Agreement; and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 830] (the “Order”), entered by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy

Court”) in the above-captioned chapter 11 cases on March 27, 2012, and the related *Memorandum Opinion Approving the Sale of Substantially All of the Debtors’ Assets*, dated March 27, 2012 [Docket No. 829] (the “Opinion”).

**Statement of Issues Presented on Appeal**

1. Whether the Bankruptcy Court erred in its conclusion in the Opinion that the Brokers were required to prove at the sale hearing the existence of a constructive trust on brokerage commissions earned by the Brokers.

2. Whether the Bankruptcy Court erred to the extent it found in the Order and the Opinion that property subject to constructive trust claims of the Brokers (i.e., brokerage commissions) is property of the Debtors’ estates under section 541(a) of the Bankruptcy Code that can be sold free and clear of any and all Claims<sup>1</sup> pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code.

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<sup>1</sup> Capitalized terms not parenthetically defined herein shall have the meaning ascribed to them in the Order or the Opinion.

**Designation of Items to Be Included in the Record on Appeal**<sup>2</sup>

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
1	2/20/2012	12	Motion to Approve /Debtors' Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets
2	2/27/2012	49	Objection / Official Committee of Unsecured Creditors' (X) Objection to Debtors' Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of Debtors' Assets and (Y) Reservation of Rights
3	2/27/2012	50	Objection to Motion /Zazove Associates LLC's Objection to Debtors Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections In Connection With the Sale of Substantially All of the Debtors Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing, and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets
4	3/1/2012	65	Motion to Approve /Debtors' Motion Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses
5	3/1/2012	66	Motion to Authorize /Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code to Authorize Payments to Cooperating Brokers

<sup>2</sup> Items are generally listed as they appear on the Court's docket. Docket numbers refer to the Bankruptcy Court's docket unless otherwise indicated. All items designated herein include all exhibits, attachments or other papers included within each docket entry for such item.

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
6	3/2/2012	69	Statement / Joinder of the Forward Funds in the Objections of Both the Official Committee of Unsecured Creditors and Zazove Associates LLC to Debtors' Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections In Connection with the Sale of Substantially All of Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (II) an Order Authorizing and Approving the Sale of Substantially All of Debtors' Assets
7	3/2/2012	74	Notice of Sale /Notice of Filing of Asset Purchase Agreement Dated March 2, 2012
8	3/2/2012	78	Objection to Motion on behalf of Parker Hamilton Property Group, LLC.
9	3/4/2012	80	Response /Debtors' Omnibus Response to Objections to Debtors' Motion for, Inter Alia, Entry of an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts
10	3/5/2012	85	Notice of Sale /Notice of Filing of Schedules and Related Attachments to Asset Purchase Agreement Dated March 2, 2012
11	3/7/2012	94	Order Signed on 3/7/2012 (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets
12	3/7/2012	95	Motion to Approve /Debtors' Amended Motion Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
13	3/9/2012	105	Objection to Motion /Objection of Jeffrey Sweeney and Anne Deason Spencer to Debtors Motion Pursuant to Sections 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses [Docket No. 65] and the Amended Motion Pursuant to Sections 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses
14	3/9/2012	107	Affidavit of Service re: Documents Served March 7, 2012
15	3/10/2012	109	Affidavit of Service re: Notice of Sale by Auction and Sale Hearing
16	3/12/2012	112	Objection /Objection and Reservation of Rights of the Ad Hoc Committee of Brokers With Respect to the Debtors Amended Motion Pursuant to Sections 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses
17	3/12/2012	113	Objection /Objection and Reservation of Rights of the Ad Hoc Committee of Brokers With Respect to the Debtors Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code to Authorize Payments to Cooperating Brokers
18	3/12/2012	114	Response /Joinder to Objection of Jeffrey Sweeney and Anne Deason Spencer to Debtors' Motion Pursuant to Section 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Retention Loan Program and Reimbursement of Expenses [Docket No. 65] and Debtors' Amended Motion Pursuant to Section 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Retention Loan Program and Reimbursement of Expenses [Docket No. 95]

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
19	3/13/2012	118	Response /Amended Joinder to Objection of Jeffrey Sweeney and Anne Deason Spencer to Debtors' Motion Pursuant to Section 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses [Docket No. 65] and Debtors' Amended Motion Pursuant to Section 363(B) and 503(C) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses [Docket No. 95]
20	3/13/2012	121	Response /Debtors' Omnibus Reply to the Objections and Joinder Filed on Behalf of: (I) Jeffrey Sweeney and Anne Deason Spencer; (II) the Ad Hoc Committee of Brokers; (iii) and Certain Brokers to Debtors' Amended Motion Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses
21	3/13/2012	122	Response /Debtors' Reply to the Objection filed on behalf of the Ad Hoc Committee of Brokers to Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code to Authorize Payments to Cooperating Brokers
22	3/13/2012	123	Declaration /Declaration of Michael J. Rispoli in Further Support of (i) Debtors Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code to Authorize Payments to Cooperating Brokers and (ii) Debtors' Amended Motion Pursuant to Sections 363(b) and 503(b) of the Bankruptcy Code for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses
23	3/14/2012	130	Certificate of Publication /Certification of Publication of Notice of Auction and Hearing to Consider Approval of the Sale of Substantially All of the Assets of Grubb & Ellis Company and Its Affiliate Companies
24	3/15/2012	162	Order signed on 3/15/2012 Authorizing the Debtors to Pay Cooperating Brokers

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
25	3/16/2012	201	Objection to Motion /Limited Objection of Inland Oak Brook International Office Center LLC; Inland American Loves Park Clifford, L.L.C.; MB BP Portfolio, L.L.C.; Inland American Retail Management, LLC; Inland American Office Management, LLC; and Inland American Industrial Management, LLC to Debtors Motion for Entry of (i) an Order (a) Approving Bidding Procedures and Bid Protections in Connection With the Sale of Substantially all of Debtors Assets, (b) Approving the Form and Manner of Notice, (c) Scheduling an Auction and a Sale Hearing and (d) Approving Procedures for Determining Cure Amounts and (ii) Approving Procedures for Determining Cure Amounts and (ii) an Order Authorizing and Approving the Sale of Substantially all of Debtors Assets
26	3/16/2012	211	Objection to Motion /Limited Objection of Griffin-American Healthcare REIT II, Inc. and Griffin-American Healthcare REIT II Holdings, LP to (I) Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets and (II) Debtors' Assumption and Assignment of Contracts
27	3/16/2012	214	Objection to Proposed Cure Amount and to Assignment of Agreement filed by Erica Tukel Wax on behalf of the Agents for Grubb & Ellis Company.
28	3/16/2012	216	Objection /Limited Objection of the CenturyLink Entities to (I) Proposed Cure Amounts and (II) Entry of Proposed Sale Order
29	3/16/2012	219	Objection of Jeffrey Sweeney to Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially all of the Debtors' Assets
30	3/16/2012	220	Objection to Motion /Limited Objection of CoStar Realty Information, Inc. to Entry of the Proposed Sale Order and Reservation of Rights with Respect to Cure Amount
31	3/16/2012	221	Objection to Motion filed by Alan F. Kaufman on behalf of Towers Crescent, LLC
32	3/16/2012	228	Objection of Steven J. Monroe to Proposed Cure Amount
33	3/16/2012	230	Objection of Ted Parris to Proposed Cure Amount

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
34	3/16/2012	232	Objection /Limited Objection to Proposed Sale filed by Timothy T. Brock on behalf of Los Angeles County Treasurer & Tax Collector
35	3/16/2012	237	Response to Motion /Limited Objection and Reservation of Rights of ACE American Insurance Company to Debtor's Motion for Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of Debtors Assets, (B) Approving the Stalking Horse Asset Purchase Agreement, (C) Approving the Form and Manner of Notice, (D) Scheduling an Auction and Sale Hearing, and (E) Approving Procedures for Determining Cure Amounts
36	3/16/2012	238	Objection to Motion /Limited Objection to Motion for Order Approving the Sale of Substantially All of the Debtors' Assets filed by Andrew K. Glenn on behalf of Martin Cottingham, Howard Grufferman, Michael Gottlieb, Jason Meister, Yoav Oelsner, Charles Kingsley, Jon Epstein, Neil Helman, Vincent Carrega
37	3/16/2012	239	Statement /Statement Seeking Clarification and Reservation of Rights of the Ad Hoc Committee of Brokers with Respect to the Debtors Motion for an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets
38	3/16/2012	242	Objection to Motion /Limited Objection and Reservation of Rights filed by Michael V. Blumenthal on behalf of Scot C. Farber.
39	3/16/2012	244	Objection of Scott Tew to Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially all of the Debtors' Assets
40	3/16/2012	246	Objection of Tew Realty Advisors, Inc. to Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially all of the Debtors' Assets



No.	Date Filed	Dkt No.	Description
41	3/16/2012	247	Objection to Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of Debtors Assets, (II) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of Debtors Assets filed by James M. Sullivan on behalf of Kurt Montagano, Bart Pucci, Joe Sklencar.
42	3/16/2012	248	Objection of Parker Hamilton Property Group, LLC to Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially all of the Debtors' Assets
43	3/16/2012	256	Declaration of Robert Osbrink filed by James M. Sullivan on behalf of Kurt Montagano, Bart Pucci, Joe Sklencar.
44	3/16/2012	261	Objection to Motion /Zazove Associates LLC's Objection to Debtors' Motion for Entry of an Order Approving and Authorizing the Sale of Substantially All of the Debtors' Assets
45	3/16/2012	264	Statement / Verified Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019 filed by Andrew K. Glenn on behalf of Vincent Carrega, Martin Cottingham, Jon Epstein, Michael Gottlieb, Howard Grufferman, Neil Helman, Charles Kingsley, Jason Meister, Yoav Oelsner.
46	3/16/2012	539	Objection /John Donnelly's Objection to Debtors' Motion
47	3/16/2012	541	Objection Re: Frank Lopriore's Objection to Debtors' Motion
48	3/19/2012	560	Objection to Motion /Amended Limited Objection of Daniel Cressman to Debtors' Motion for an Order Authorizing and Approving a Sale of Substantially All of Debtors' Assets and the Assumption and Assignment of Executory Contracts and Reservation of Rights
49	3/19/2012	564	Statement / Reservation of Rights of the International Union of Operating Engineers, AFL-CIO, Local 94-94A, with Respect to Debtors' Sale Motion

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
50	3/19/2012	620	Objection of Hines VAF II Sacramento Properties, L.P. to Debtors' Proposed Assumption and Assignment of the Customer Agreement between the Parties set forth in the Notice to Counterparties to Potentially Assumed Contracts and Unexpired Leases with Exhibits
51	3/19/2012	688	Notice of Hearing /Notice of Change of Time of Hearing to Consider Debtors' Motion for an Order, Inter Alia, Authorizing the Sale of Substantially All of Their Assets and Granting Related Relief
52	3/19/2012	822	Transcript regarding Hearing Held on Monday, March 5, 2012 at 3:31 PM RE: Evidentiary Hearing RE: Approval of Bid Procedures; Status Conference RE: Debtors' Motion for an Order Authorizing Implementation of a Broker Loan Program and Reimbursement of Expenses; Debtors' Motion to Authorized Payments to Cooperating Brokers; Debtors' Motion to Approve Amendments to (I) the Interim Financing Order, and (II) the DIP Facility
53	3/20/2012	693	Statement /Joinder of the Forward Funds in the Objection of Zazove Associates LLC to Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets
54	3/20/2012	715	Notice of Adjournment of Hearing /Notice of Adjournment of March 22, 2012 Hearing Solely with Respect to Objections to Proposed Cure Amounts Under Executory Contracts and Unexpired Leases that May be Assumed and Assigned by the Debtors (Related to Dockets Nos. 12 and 94)
55	3/20/2012	720	Statement /Notice of Cancellation of Auction Scheduled for March 21, 2012 at 12 Noon
56	3/21/2012	757	Declaration of James M. Sullivan in Support of the Limited Objection of Bart Pucci, Joe Sklencar, John C. Kinsella, Joel I. Wechsler, Kurt Montagano, and Kathryn Cosentino to Entry of an Order Approving the Sale of Substantially All of the Debtors' Assets

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
57	3/21/2012	763	Response /Debtors' Omnibus Response to Objections to Debtors' Motion for Entry of an Order, inter alia, Authorizing and Approving (I) the Sale of Substantially All of the Debtors' Assets and (II) the Assumption and Assignment of Executory Contracts and Unexpired Leases
58	3/21/2012	764	Declaration /Declaration of Marc Liebman in Support of Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets and In Response to Objections thereto
59	3/21/2012	765	Declaration /Declaration of Michael J. Rispoli In Further Support of Debtors' Motion for Entry of an Order Authorizing and Approving the Sale of Substantially All of the Debtors' Assets and In Response to Objections thereto
60	3/21/2012	776	Motion to Join Limited Objection to Entry of an Order Approving the Sale of Substantially All of the Debtors' Assets filed by James M. Sullivan on behalf of Kathryn Cosentino, John C. Kinsella, Kurt Montagano, Nancy Niehoff, Bart Pucci, Joe Sklencar, Joel I. Wechsler
61	3/21/2012	777	Notice of Agenda /Amended Proposed Agenda for Hearing Scheduled for March 22, 2012 at 3:00 P.M.
62	3/21/2012	778	Letter / Notice of Filing of Stipulation and Settlement Among the Debtors, the Creditors' Committee and BGC Partners, Inc.
63	3/21/2012	779	Statement of Official Committee of Unsecured Creditors in Support of the Debtors' Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling an Auction and a Sale Hearing and (D) Approving Procedures for Determining Cure Amounts and (II) an Order Authorizing and Approving the Sale of Substantially All of Debtors' Assets
64	3/21/2012	780	Declaration of Samuel E. Star in Support of the Proposed Sale of Substantially All of the Debtors' Assets to BCG Partners, Inc.
65	3/22/2012	798	Order Signed on 3/22/2012 Regarding Sale Hearing.

<b>No.</b>	<b>Date Filed</b>	<b>Dkt No.</b>	<b>Description</b>
66	3/27/2012	829	Written Opinion signed on 3/27/2012 Approving the Sale of Substantially all of the Debtor's Assets.
67	3/27/2012	830	Order Signed on 3/27/2012 Authorizing (A) the Sale of Substantially all of the Debtors' Assets Free and Clear of all Claims, Liens, Rights, Interests and Encumbrances; (B) the Debtors to Enter Into and Perform Their Obligations Under the Asset Purchase Agreement; and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases.
68	3/27/2012	831	So Ordered Stipulation signed on 3/27/2012 Among the Debtors, the Creditors' Committee and BGC Partners, Inc.
69	3/27/2012	835	Notice of Appeal from the Order Authorizing (A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances; (B) the Debtors to Enter Into and Perform Their Obligations Under the Asset Purchase Agreement; and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases entered on March 27, 2012, and Memorandum Opinion Approving the Sale of Substantially All of the Debtors' Assets, dated March 27, 2012 filed by Andrew K. Glenn on behalf of Vincent Carrega, Martin Cottingham, Jon Epstein, Michael Gottlieb, Howard Grufferman, Neil Helman, Charles Kingsley, Jason Meister, Yoav Oelsner
70	3/27/2012	837	Notice of Appeal from the Order Authorizing (A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances; (B) the Debtors to Enter Into and Perform Their Obligations Under the Asset Purchase Agreement; and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases filed by Michael S. Fox on behalf of Ad Hoc Committee of Brokers
71	3/27/2012	839	Transcript regarding Hearing Held on Thursday, March 22, 2012 at 3:04 PM RE: Motion to Approve Pursuant to 11 U.S.C. Sections 105, 365 (a) and 554(a) Requesting Approval of Procedures for the Rejection of Unexpired Leases and Executory Contract

Dated: April 10, 2012  
New York, New York

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